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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
Sacramento Division**

Michael Crook, individually and on
behalf of all others similarly situated;

Plaintiff,

-against-

Midland Credit Management, Inc.
Midland Funding LLC
and John Does 1-25.

Defendant(s).

Case No.:

CLASS ACTION COMPLAINT for
violations of the Fair Debt Collection
Practices Act, 15 U.S.C. § 1692 *et seq*

DEMAND FOR TRIAL BY JURY

Plaintiff Michael Crook hereinafter, (“Plaintiff”), a California resident, brings this Class Action Complaint by and through his attorneys, against Defendant Midland Credit Management, Inc. (hereinafter “Defendant MCM”) and Defendant Midland Funding LLC (hereinafter “Defendant MF”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for

1 allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's
2 personal knowledge.

3 4 **INTRODUCTION/PRELIMINARY STATEMENT**

5 1. Congress enacted the FDCPA in 1977 in response to the "abundant
6 evidence of the use of abusive, deceptive, and unfair debt collection practices by
7 many debt collectors." 15 U.S.C. §1692(a). At that time, Congress was
8 concerned that "abusive debt collection practices contribute to the number of
9 personal bankruptcies, to material instability, to the loss of jobs, and to invasions
10 of individual privacy." *Id.* Congress concluded that "existing laws...[we]re
11 inadequate to protect consumers," and that "the effective collection of debts"
12 does not require "misrepresentation or other abusive debt collection practices."
13 15 U.S.C. §§ 1692(b) & (c).

14 2. Congress explained that the purpose of the Act was not only to
15 eliminate abusive debt collection practices, but also to "insure that those debt
16 collectors who refrain from using abusive debt collection practices are not
17 competitively disadvantaged." *Id.* § 1692(e). After determining that the existing
18 consumer protection laws were inadequate~ *id.* § 1692(b), Congress gave
19 consumers a private cause of action against debt collectors who fail to comply
20 with the Act. *Id.* § 1692k.

21 22 23 24 25 26 **JURISDICTION AND VENUE**

1 3. The Court has jurisdiction over this class action pursuant to 28 U.S.C.
2 § 1331, as well as 15 U.S.C. § 1692 et. seq. The Court also has pendent
3 jurisdiction over the State law claims in this action pursuant to 28 U.S.C.
4 § 1367(a).

5
6 4. Venue is proper in this judicial district pursuant to 28 U.S.C.
7 § 1391(b)(2) as this is where the Plaintiff resides as well as where a substantial
8 part of the events or omissions giving rise to the claim occurred.
9

10 **NATURE OF THE ACTION**

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12 5. Plaintiff brings this class action on behalf of a class of California
13 consumers under § 1692 et seq. of Title 15 of the United States Code, commonly
14 referred to as the Fair Debt Collections Practices Act ("FDCPA"), and
15

16 6. Plaintiff is seeking damages and declaratory and injunctive relief.

17 **PARTIES**

18 7. Plaintiff is a resident of the State of California, County of Sacramento,
19 residing at 3051 Yarwood Way, Sacramento, CA 95833.
20

21 8. Defendant MCM is a "debt collector" as the phrase is defined in 15
22 U.S.C. § 1692(a)(6) and as used in the FDCPA and can be served upon their
23 registered agent, Corporation Service Company Which Will Do Business in
24 California as CSC-Lawyers Incorporating Service, 2710 Gateway Oaks Drive,
25 Suite 150N, Sacramento, CA 95833.
26
27
28

1 9. Upon information and belief, Defendant MCM is a company that uses
2 the mail, telephone, and facsimile and regularly engages in business the
3 principal purpose of which is to attempt to collect debts alleged to be due
4 another.
5

6 10. Defendant MCM is a "debt collector" as the phrase is defined in 15
7 U.S.C. § 1692(a)(6) and as used in the FDCPA and can be served upon their
8 registered agent, Corporation Service Company Which Will Do Business in
9 California as CSC-Lawyers Incorporating Service, 2710 Gateway Oaks Drive,
10 Suite 150N, Sacramento, CA 95833.
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12 11. Upon information and belief, Defendant MCM is a company that uses
13 the mail, telephone, and facsimile and regularly engages in business the
14 principal purpose of which is to attempt to collect debts alleged to be due
15 another.
16

17 12. John Does 1-25, are fictitious names of individuals and businesses
18 alleged for the purpose of substituting names of Defendants whose identities
19 will be disclosed in discovery and should be made parties to this action.
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CLASS ALLEGATIONS

12. Plaintiffs bring this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

13. The Class consists of:

- a. all individuals with addresses in the State of California;
- b. to whom Defendant MCM sent an initial collection letter attempting to collect a consumer debt;
- c. on behalf of Defendant MF;
- d. containing deceptively worded settlement offers;
- e. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

14. The identities of all class members are readily ascertainable from the records of Defendants and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.

15. Excluded from the Plaintiff Class are the Defendants and all officer, members, partners, managers, directors and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

16. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual

1 class members. The principal issue is whether the Defendants' written
2 communications to consumers, in the forms attached as Exhibit A, violate 15
3 U.S.C. §§ 1692e.
4

5 17. The Plaintiff's claims are typical of the class members, as all are based
6 upon the same facts and legal theories. The Plaintiff will fairly and adequately
7 protect the interests of the Plaintiff Class defined in this complaint. The Plaintiff
8 has retained counsel with experience in handling consumer lawsuits, complex
9 legal issues, and class actions, and neither the Plaintiff nor his attorneys have
10 any interests, which might cause them not to vigorously pursue this action.
11
12

13 18. This action has been brought, and may properly be maintained, as a
14 class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil
15 Procedure because there is a well-defined community interest in the litigation:
16

17 a. **Numerosity:** The Plaintiff is informed and believes, and on that
18 basis alleges, that the Plaintiff Class defined above is so numerous
19 that joinder of all members would be impractical.
20

21 b. **Common Questions Predominate:** Common questions of law and
22 fact exist as to all members of the Plaintiff Class and those
23 questions predominate over any questions or issues involving
24 only individual class members. The principal issue is whether the
25 Defendants' written communications to consumers, in the forms
26 attached as Exhibit A violate 15 U.S.C. § 1692e.
27
28

1 c. **Typicality**: The Plaintiff's claims are typical of the claims of the
2 class members. The Plaintiff and all members of the Plaintiff Class
3 have claims arising out of the Defendants' common uniform course
4 of conduct complained of herein.
5

6 d. **Adequacy**: The Plaintiff will fairly and adequately protect the
7 interests of the class members insofar as Plaintiff has no interests
8 that are adverse to the absent class members. The Plaintiff is
9 committed to vigorously litigating this matter. Plaintiff has also
10 retained counsel experienced in handling consumer lawsuits,
11 complex legal issues, and class actions. Neither the Plaintiff nor his
12 counsel have any interests which might cause them not to
13 vigorously pursue the instant class action lawsuit.
14
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17 e. **Superiority**: A class action is superior to the other available means
18 for the fair and efficient adjudication of this controversy because
19 individual joinder of all members would be impracticable. Class
20 action treatment will permit a large number of similarly situated
21 persons to prosecute their common claims in a single forum
22 efficiently and without unnecessary duplication of effort and
23 expense that individual actions would engender.
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27 19. Certification of a class under Rule 23(b)(3) of the Federal Rules of
28 Civil Procedure is also appropriate in that the questions of law and fact common

1 to members of the Plaintiff Class predominate over any questions affecting an
2 individual member, and a class action is superior to other available methods for
3 the fair and efficient adjudication of the controversy.
4

5 20. Depending on the outcome of further investigation and discovery,
6 Plaintiff may, at the time of class certification motion, seek to certify a class(es)
7 only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).
8

9 **FACTUAL ALLEGATIONS**

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11 21. Plaintiff repeats, reiterates and incorporates the allegations contained
12 in paragraphs numbered above herein with the same force and effect as if the
13 same were set forth at length herein.
14

15 22. Some time prior to June 10, 2020, an obligation was allegedly incurred
16 to creditor Webbank
17

18 23. The Webbank obligation arose out of transactions incurred primarily
19 for personal, family or household purposes.
20

21 24. The alleged Webbank obligation is a "debt" as defined by 15 U.S.C. §
22 1692a(5).
23

24 25. Webbank is a "creditor" as defined by 15 U.S.C. § 1692a(4).
25

26 26. Webbank debt purportedly sold the alleged debt to Defendant MF who
27 contracted with the Defendant MCM to collect the alleged debt.
28

Violation – June 10, 2020 Collection Letter

27. On or about June 10, 2020, Defendant MCM sent the Plaintiff a collection letter (the “Letter”) regarding the alleged debt owed to Webbank See a true and correct copy of the Letter attached at Exhibit A.

28. The letter states a current balance of \$821.33 and gives three payment options:

1) Save 40% - Pay 1 payment of \$780.08

2) Save 20% - Pay 6 consecutive monthly payments of \$173.35

3) Pay \$50 per month – Payments as low as \$50 per month.

29. The third option provided by Defendant is not adequately explained and results in two different possible interpretations.

30. First, Option 3 might be construed to be an option where a discounted amount is being paid in monthly payments of \$50 a month.

31. Second, Option 3 might be construed to be an option where monthly payments of \$50 would be made until the debt is paid off.

32. In addition, if Option 3 means that the \$50 payment would be made until the debt is fully paid off, the letter is deceptive because it describes all three options as “a discount program designed to save you money.” If the debt is being paid in full under Option 3, it is not a discount program and therefore the letter is deceptive.

33. By failing to explain whether Option 3 is a settlement option or a full pay option, the Letter is false, deceptive and misleading.

34. As a result of Defendants' deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15
U.S.C. §1692e *et seq.*

35. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

36. Defendants' debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

37. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

38. Defendant violated §1692e:

f. As the Letter it is open to more than one reasonable interpretation,
at least one of which is inaccurate in violation of §1692e(2).

g. By making a false and misleading representation in violation of §1692e(10).

1 **39.** By reason thereof, Defendant is liable to Plaintiff for judgment that
2 Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual
3 damages, statutory damages, costs and attorneys' fees.
4

5
6 **DEMAND FOR TRIAL BY JURY**

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8 40. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff
9 hereby requests a trial by jury on all issues so triable.
10

11
12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff Michael Crook, individually and on behalf of all others
14 similarly situated, demands judgment from Defendant MCM and Defendant MF as
15 follows:
16

17 a) Declaring that this action is properly maintainable as a Class Action
18 and certifying Plaintiff as Class representative, and Jonathan Stieglitz, Esq. as
19 Class Counsel;
20

21 b) Awarding Plaintiff and the Class statutory damages;
22

23 c) Awarding Plaintiff and the Class actual damages;
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25 d) Awarding Plaintiff costs of this Action, including reasonable
26 attorneys' fees and expenses;

27 e) Awarding pre-judgment interest and post-judgment interest; and
28

Dated: August 7, 2020

By: /s/ Jonathan A Stieglitz
Jonathan A Stieglitz